Central Intelligence Agency

Washington, D.C.

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OCA 86-1356
24 April 1986

Mr. Michael J. O'Neil
Chief Counsel
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mike:

Enclosed is the latest version of our proposed legislative history to the intelligence exemption in H.R. 3378 that STAT [redacted] STAT mentioned to you yesterday. Some of the language in the last paragraph on committee oversight is drawn from remarks made by Congressman Kastenmeier upon introduction of the bill. A copy of the Congressman's remarks is also enclosed for your information.

Sincerely,

STAT [redacted]

Office of Congressional Affairs

Enclosures (as stated)

cc: Mr. Steven K. Berry
Associate Counsel

Distribution:
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1 - DCA
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STAT 1 - [redacted] ILD/OGC
1 - OCA/Legis Subj: HR 3378
1 - DMP Signer

OCA/LEG:DMP:gv(24 Apr 86)

HONORED ONCE AS FALLEN WARRIORS, DEEP IN OUR MEMORIES, NEVER TO BE FORGOTTEN

WORLD WAR II

Alesse, John E., Ayres, Gordon W., Balogh, Godfrey S., Bentz, Joseph J., Biednick, Leonard W., Boyer, Henry, Brown, Jack W., and Brown, Robert.

Callender, Jack, Catanzano, John F., Christie, Matthew J., Cobner, Robert J., Cohen, Charles G., Coniey, Raymond H., Cooke, John F., Creevy, Edward J., Davis, Charles W., Davis, Evan, DeCesare, Thomas, Dolezal, Eugene, and Dumbar, Eugene F.

Evans, William H., Eyler, Clarence R., Feehrer, Maurice, Fetzer, Charles A.L., Finegan, John P., Fioretto, Thomas S., Floss, George W., M.D., Fugitt, Howard F., Garo, William H., Gaydos, Edmund J., Gerich, George E., Grana, Mario M., and Glunt, John R.

Huggins, James T., Hooper, John, Hosper, Stephen, Isenberg, Robert T., Isles, Harry T., Isles, Peter J., Jeremias, Albert M., Johnson, Charles W., Jones, Thomas L., and Joyce, Richard J.

Kann, William G., Kaplan, Donald E., Kapral, Andrew, Kitchen, Keith D., Klein, Maurice, Lane, Andrew L., Levens, Edward J., Levens, Kenneth, Lehman, Michael E., Liles, James S., Locke, Byron K., Loesel, William G., Logan, Charles L., Loughead, Thomas, Lowery, Ellis E., and Lyach, John A.

Marino, Joseph A., Marino, Leonard A., Masilon, John F., Mayer, Raymond D., Meese, Richard C., Morrow, Thomas J., Murphy, Edward R., Murray, George M., McBride, John P., McStea, Alexander, Netwon, Jack S., Nonemaker, John B., and Nord, John R.

Osaja, George S., Pershke, Kenneth H., Petty, Robert T., Pulsinelli, Joseph F., Ridley, Richard C., Russell, William, Seger, Eugene W., Seese, Robert L., Sharlock, Robert O., Shipman, Donovar, T., Simone, Frank J., and Swaney, John F.

Tamilitis, Norman, Tilley, William H., Toomey, William, Vinciquerra, Silvio R., Wilson, John M., and Wissinger, Roy V.

KOREA

Connelly, Charles K., Early, Lawrence, McDonough, Jerry, and Rudge, Frederick A.

VIETNAM

Abraham, James, Greeley, Dennis A., and Horvath, William F.

ELECTRONIC COMMUNICATION PRIVACY ACT OF 1985

HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 19, 1985

Mr. KASTENMEIER. Mr. Speaker, when Congress passed the wiretap law [1] in 1968, there was a clear consensus that telephone calls should be private. Earlier Congresses had reached that same consensus regarding mail and telegrams.

But in the almost 20 years since Congress last addressed the issue of privacy of communications in a comprehensive fashion, the technologies of communication and interception have changed dramatically.

Today we have large-scale electronic mail operations, cellular and cordless telephones, paging devices, miniaturized transmitters for radio surveillance, light-weight compact television cameras for video surveillance, and a dazzling array of digitized information networks which were little more than concepts two decades ago.

These new modes of communication have outstripped the legal protection provided under statutory definitions bound by old technologies. The unfortunate result is that the same technologies that hold such promise for the future also enhance the risk that our communications will be intercepted by either private parties or the Government.[2] Virtually every day the press reports on the unauthorized interception of electronic communications ranging from electronic mail and cellular telephones to data transmissions between computers. The communications industry is sufficiently concerned about this issue to have begun the process of seeking protective legislation. This bill is, in large part, a response to these legitimate business concerns.

Congress needs to act to ensure that the new technological equivalents of telephone calls, telegrams and mail are afforded the same protection provided to conventional communications. The situation we face today was clearly foreseen by Justice Brandeis in 1928 when he said:

Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth. . .

The progress of science in furnishing the government with means of espionage is not likely to stop with wiretapping. Ways may some day be developed by which the government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home.

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significane of man's spiritual nature, of his feelings and of this intellect . . . They conferred as against the government the right to be let alone—the most comprehensive of rights and the right most value by civilized men.[3]

WHAT IS AT STAKE

Without legislation addressing the problems of electronic communications privacy, emerging industries may be stifled. For example, recent court decisions concerning cellular and cordless telephones leave a serious question whether calls made over those systems are truly private. Similarly the current law with respect to the interception of digitized information over a common carrier telephone line is unclear. This type of uncertainty may unnecessarily discourage potential customers from using such systems. More importantly this ambiguity may encourage unauthorized users to obtain access to communications to which they are not party.

In addition to the commercial dislocations which may occur if we do not act to protect the privacy of our citizens, we may see the gradual erosion of a precious right. Already the very same communication between two persons is subject to widely disparate legal treatment depending on whether the message was carried by regular mail, electronic mail, an analog phone line, a cellular phone or some other form of electronic communication system. This technology-dependent legal approach does not adequately protect personal communications; rather, it imperfectly affords legal protection to communications carried by some industries. Nor does this crazy quilt of laws reflect the centrality of American's privacy concerns. As recent polls clearly show, Americans care about privacy interests.[4] As one commentator put it:

Privacy is not just one possible means among others to insure some other value, but . . . it is necessarily related to ends and relations of the most fundamental sort: respect, love, friendship and trust. Privacy is not merely a good technique for furthering these fundamental relations; rather without privacy they are simply inconceivable.[5]

WHAT CAN BE DONE

Today I am introducing, with the ranking minority member of my subcommittee, CARLOS J. MOORHEAD of California, the Electronic Communication Privacy Act of 1985. This bill is the byproduct of more than 2 years of effort by the Subcommittee on Courts, Civil Liberties and the Administration of Justice, which I Chair. The bill also has been developed after careful consultation with the affected industries, civil liberties groups, and the Development of Justice. At this point none of these groups has endorsed the bill, but each of these constituencies has confirmed the need for legislation in this area. It is my hope that in the weeks and months ahead the affected parties will work with the subcommittee in the spirit of cooperation and compromise to forge a bill which meets this urgent problem.

SUMMARY OF THE BILL

There are seven major features of the bill:

First, the bill extends the protection against interception from voice transmissions to virtually all electronic communications. Thus, legal protection will be exended to the digitized portion of telephone calls, the transmission of data over telephone lines, the transmission of video images by microwave, or any other conceivable mix of medium and message. The bill also provides several clear exceptions to the bar on interception so as to leave unaffected communication system designed so that such communication is readily available to the public; for example, walkie talkies, police or fire communications systems, ship-to-shore radio, ham radio operators or CB operators are not affected by the bill.

Second, the bill eliminates the distinction between common carriers and private car-

[1] Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

[2] According to a soon to be released study of this question by the Office of Technology Assessment, Federal agencies are planning to use or already use closed circuit TV surveillance (29 agencies), radio scanners (20 agencies), cellular telephone interception (6 agencies), tracking devices (15 agencies), pen registers (14 agencies), and electronic mail interceptions (6 agencies). This increased use of a variety of electronic surveillance devices alone is not cause for alarm. There are instances when a particular electronic surveillance technique is necessary to complete a criminal investigation, as my bill recognizes.

[3] *Olmstead v. United States*, 277 U.S. 438, 474 (1928) (Brandeis, J. dissenting).

[4] According to a 1984 poll, 77 percent of Americans are concerned about technology's threats to their personal privacy. Louis Harris & Associates, "The Road after 1984," Southern New England Telephone (1984).

[5] Fried, "Privacy," 77 Yale, L. J. 475, 477 (1968).

riers, because they each perform so many of the same functions. The size of many of the private carriers makes them appropriate for inclusion within the protection of Federal laws.

Third, the bill creates criminal and civil penalties for persons who—without judicial authorization—obtain access to an electronic communication system and obtain or alter information. This provision parallels that dealing with interception (see first paragraph above). It would be inconsistent to prohibit the interception of digitized information while in transit and leave unprotected the accessing of such information while it is being stored. This part of the bill assures consistency in this regard.

Fourth, the bill protects against the unauthorized disclosure of third-party records being held by a electronic communication system. Without such protection the carriers of such messages would be free to disclose records of private communications to the Government without a court order. Thus, the bill provides that a governmental entity must obtain a court order under appropriate standards before it is permitted to obtain access to these records. This requirement, while protecting the Government's legitimate law enforcement needs, will serve to minimize intrusiveness for both system users and service providers. This provision also assures that users of a system will have the right to contest allegedly unlawful Government actions. The approach taken in the bill is similar to the congressional reaction to the Supreme Court decision in *United States* v. *Miller*, 425 U.S. 435 (1976), when we enacted the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq.

Fifth, the interests of law enforcement are enhanced by updating the provisions of Federal law relating to wiretapping and bugging. Under current law an Assistant Attorney General must personally approve each interception application. The bill permits an Acting Assistant Attorney General to approve such applications. The bill also expands the list of crimes for which a tap or bug order may be obtained to include the crimes of escape, chop shop operation, murder for hire, and violent crimes in aid of racketeering.

Sixth, the basic provisions of the Federal wiretapping law are updated to: First, require that the application for a court-ordered tap or bug disclose to the court the investigative objective to be achieved; second, the application must indicate the viability of alternative investigative techniques; third, authorizes the placement of certain mobile interception devices; fourth, authorizes physical entry into the premises to install the bug or tap consistent with *Dalia* v. *United States*, 441 U.S. 238 (1979); and Fifth, rationalizes the Government's reporting obligations after a tap or bug has been obtained.

Seventh, the bill regulates the Government use of pen registers and tracking devices. Pen registers are devices used for recording which phone numbers have been dialed from a particular phone. Tracking devices are devices which permit the tracking of the movement of a person or object in circumstances where there exists reasonable expectation of privacy. Tracking devices, therefore, include "beepers" and other nonphone surveillance devices.

The bill requires the Government to obtain a court order based upon "reasonable cause" before it can use a "pen register." This standard resembles current administrative practice. *Compare United States* v. *New York Telephone Co.*, 434 U.S. 159 (1977)—a title III order is not required for pen registers—*Smith* v. *Maryland*, 442 U.S. 735 (1979)—pen registers not regulated by the fourth amendment. The bill requires that the Government show probable cause to obtain a court order for a tracking device. This showing is consistent with the current law. *United States* v. *Karo*, 104 S. Ct. 3296 (1984).

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT, 1986

SPEECH OF

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 12, 1985

The House in Committee of the Whole House on the State of the Union had under consideration the bill: (H.R. 3244) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1986, and for other purposes.

Mr. BOEHLERT. Mr. Chairman, I rise in opposition to the Coughlin amendment to delete all funds for the Westway project in New York City. I agree with my distinguished chairman and ranking minority member of the Public Works Committee that the DOT appropriations bill is not the proper place to address this issue.

I would like to reiterate what was said by the gentleman from New Jersey [Mr. HOWARD], that in no way is a vote against the Coughlin amendment a vote against legitimate environmental concerns; in no way is it a vote for more outrageous, pork-barrel spending. My record will show that I am an ardent environmentalist, and that I have worked hard to achieve serious, balanced cutbacks in Government spending.

The Coughlin amendment was rejected by the Transportation Appropriations Subcommittee and the full Appropriations Committee and for sound reasons. It is very poor legislative practice, and I think it is very unfair to the State and city of New York to deny this issue a full hearing before the committee which has sole jurisdiction over Westway, the House Public Works Committee.

The chairman of that committee has a bill of his own that addresses Westway, and has made clear his intention to hold, before the end of the month, a full committee hearing on Westway during consideration of the Surface Transportation Assistance Act.

The Public Works Committee is the proper forum for addressing this issue in a thorough fashion. It is the only forum which guarantees that the right of New Yorkers, and all American taxpayers, to a fair consideration of all aspects of federally supported transportation policy in the city of New York.

SS "CITY OF FLINT:" A HISTORY

HON. BEVERLY B. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 19, 1985

Mrs. BYRON. Mr. Speaker, on October 9, 1939, not long after the war in Europe began, the SS *City of Flint*, an American merchant ship, was seized by the German warship, *Duetchland*, for carrying war contraband. Mr. Raymond F. Trumpe, a resident of Westminster, MD, was serving on the *City of Flint* at that time and spent 114 days as a captive. Recently, Mr. Trumpe donated a diary of the incident to the Smithsonian Institution for the benefit of us all.

The reason for recognizing and recording accounts such as these is self-evident. It is through gifts such as these that we are able to preserve our history and our heritage, to the lasting benefit of our children and future Americans.

I would like, therefore, to insert in the RECORD the information which Mr. Trumpe so generously sent to me about the life of the SS *City of Flint*. The words that follow are an account of the incident as recorded by the second officer of the ship. I would like, finally, to express my deep appreciation to Mr. Trumpe for bringing this event to our attention, and for his donation of these materials to the Smithsonian Institution—he is an example for us all.

Voyage 50-155, U.S. Lines II, Voyage II, Warren H. Rhoads, Chief Officer.

Sailed Norfolk, Va., Sept. 25, 1939.

Arrived New York, N.Y., Sept. 27, 1939.

Sailed New York, N.Y., Oct. 3, 1939.

Oct. 9, 1939 at 3:30 p.m. sighted German Pocket Battleship "Duetchland" in Lat. N. Long. W and was ordered to stop. 4:30 p.m. German officers boarded and examined cargo manifest and notified us we had war contraband aboard and will take us to Germany. 6:00 p.m. proceeded northward with German prize crew consisting of 3 officers, 1 Petty officer and 14 enlisted men as guards equipped with hand grenades and bayonetts. They also transferred 38 men to this ship from British ship "Stonegate" which they had sunk on Oct. 5–Oct. 15. We passed through numerous icebergs and glaciers, some were in the straits of Denmark. They now had painted out American Flags and names on ships sides. Also life-boats and then named the vessel "Alf". During all this time we were running without a single light at night. Oct. 20, 1939 at 6:30 p.m. we anchored at Tronso, Norway flying the German "Man of War" flag. After we had taken aboard fresh water we were ordered out by Norwegian Navy, after landing crew of "S.S. Stonegate" we heaved up anchor and sailed at 4:30 p.m. followed by naval vessel to see that we left Norwegian water. After putting out to sea we headed northward, destination unknown. Oct. 23 at 3:30 p.m. we anchored in Murmansk, Russia still flying the "Man of War" flag. Oct. 24 at 5:30 p.m. Russian officers came aboard and disarmed German crew and took them ashore telling us we were free and could sail as soon as our papers were returned. Oct. 25 hoisted signals asking permission for master to go ashore. Russian man anchored a stern of us answered our signals and refused to grant permission. Oct. 26—waiting for orders we were now flying U.S. Ensignia. Oct. 27 4:00 a.m. Russians returned vessel back to German Prize Crew again, this time